IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10777 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAKESH @ RAJESH S/O RAJKUAMR @SHIVSINH PARDHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR VG DESAI for MR ASHISH M DAGLI for Petitioner No. 1

MS MITA PANCHAL, AGP Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 31.5.2003 passed by the Police Commissioner, City of Surat, against

him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 31.5.2003.

2. The grounds served upon the petitioner, and as placed on record reveal that the detaining authority took into consideration two crimes registered against the petitioner and others on 30.3.2003 and 31.3.2003 under Sections 457 and 380 of the Indian Penal Code for committing thefts. The detaining authority also took into consideration two in-camera statements as recorded by the sponsoring authority on 16.5.2003 and verified by the detaining authority on 29th of May, 2003, revealing the incidents occurred on 30.3.2003 and 6th of April, 2003, which are unreported to the police. From the above material, the order impugned came to be passed by the detaining authority.

3. Learned Advocate Mr.V.G.Dave for learned Advocate Mr. A.M. Dagli for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard at length. The affidavit-in-reply filed by the detaining and as placed on record is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP for the respondents, from the rival contentions, this petition can be considered and be decided on the sole ground whether the order impugned is passed with delay so as to render the detention bad in law. The chronology of events as relied upon by the detaining authority emerges, as aforesaid, on 30.3.2003 when first crime of theft came to be registered against the petitioner and others on 31.3.2003 the other crime is registered. There are two unreported incidents occurred on 30.3.2003 and 6.4.2003. However, unreported incidents could be collected by the sponsoring authority on 16.5.2003 only and the statements which were in-camera were verified by the detaining on 29.5.2003. So, from the last date of the registration of the crimes, the order is passed after two months and, therefore, the vehement contention on behalf of the petitioner about the delay in passing the order. Though against that, the learned AGP has drawn my attention on the affidavit-in-reply filed by the detaining authority, contended that in the last offence registered against the petitioner, he was arrested only on 17.4.2003 and

thereafter he was released on bail and continued his activities and, therefore, the proposal was prepared by Ahwa Police Station on 16th of May, 2003 and was sent to the competent authority on 20.5.2003. Thereafter, the witnesses were called for the purpose of subjective satisfaction of detaining authority on 29.5.2003 and the order impugned came to be passed on 31.5.2003 and, therefore, there is no delay in the first place and if there be any delay, the same is explained.

5. Having regard to the rival contentions, it clearly appears that the last offence came to be registered against the petitioner on 31.3.2003 and order came to be passed on 31.5.2003. If the petitioner continued his activity after 17.4.2003, then also, the in-camera statements could be recorded on 16.5.2003 only. It also refers to the incidents occurred on 30.3.2003 and 6.4.2003. Only material collected after registration of the crimes is in the shape of two in-camera statements. Therefore, undoubtedly, the delay is caused in passing of the order. The facts of the case are covered by a decision of this Court in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381. This court in para 21 observed as under :

" 21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. The unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P., reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993 (2) Suppli.

SCC 61."

6. Having regard to the facts of this case also it clearly appears that the proximity or the live link between the alleged objectionable activity of the petitioner and the passing of the detention order is snapped by delay of about 2 months rendering the further detention of the petitioner bad in law. The order impugned therefore is required to be quashed on this ground alone.

7. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Surat City, on 31.05.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair